Posner –

Posner supposedly was going to represent twins victims of Mengele in a lawsuit.

Some question as to why he didn't go ahead with it (see attached)

No suit was filed.

He had formed his own law firm

Posner + Ferraro.

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HEADLINE: Reader Objects to 'Selective Pursuit of Justice'

BYLINE: Albert Mokhiber, Director, Legal Service Department, American-Arab Anti-Discrimination Committee, Washington, D.C.

BODY:

I WOULD LIKE to congratulate Alexander Stille and The National Law Journal for the fascinating article "Nazi Victims Turn to the Law." (NLJ, 11-15-85.)

While many victims of various holocausts have considered bringing such actions in the past, it is encouraging to see the positive results that some of our colleagues have had. Not only have they addressed long-overdue issues of

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state terrorism and related violations of human rights, they also have obtained judgments and money damages that inevitably will bring some solace to the victims.

However, there was a very disturbing, if not reprehensible statement attributed to one attorney in New York, Gerald Posner, when explaining why a class action of Auschwitz survivors against the West German government was not brought. Mr. Posner was quoted as saying, "We decided not to proceed with the suit because a lot of Jewish groups were afraid that [the idea] could be used against Israel in their actions, let's say, in Lebanon."

How anyone could be so selective in his pursuit of justice and human rights is baffling. As an Arab-American who fully applauds Mr. Posner's work on behalf of Jewish victims of an earlier Nazi holocaust, I would also expect him to advocate the same rights for Arab victims of a more recent Zionist holocaust.

LANGUAGE: ENGLISH

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Gerald Posner, a New York attorney, for example, had to follow a trail of evidence that took him to 11 nations, following the tracks of a man who had disappeared 35 years ago: Joseph Mengele, the notorious doctor of Auschwitz.

Dr. Mengele had performed hundreds of gruesome and usually fatal experiments using human beings as laboratory animals. A believer in the science of eugenics, Dr. Mengele used twins as the chief objects of his research. One hundred of them are still alive. Thirty of the surviving twins living in the United States became Mr. Posner's clients in 1981.

The case was a departure for Mr. Posner, who previously had been an associat at New York's Cravath, Swaine & Moore, where he helped defend IBM in a massive antitrust suit. He took the case together with Joseph G. Ferrara, his partner in a new firm he had formed, Posner & Ferrara.

Along with psychological injury, many of these survivors have lifelong medical disabilities from the Mengele experiments. "Their doctors don't know how to treat them because they don't know what was done to them," Mr. Posner said. "Mengele injected things into their spines and only he knows what he injected."

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Mr. Posner had the problem of proceeding with a case involving a man whom th intelligence services of the world had failed to find for 35 years and who migh be dead. He settled on the idea of suing the government of Paraguay, where Dr. Mengele was rumored to have lived for many years, for knowingly harboring a war criminal.

MR. POSNER HAD his eye on a landmark case decided in New York, in which the family of a torture victim successfully sued the Paraguayan police official responsible for the boy's death. In that case, U.S. District Judge Eugene H. Nickerson Jr. of the Eastern District of New York awarded damages to the plaintiffs in 1984, although no money has been collected. Filartega v. Pena-Irala, 79-6090.

"We were going to file in the Eastern District in the hope of drawing Judge Nickerson," Mr. Posner said.

The suit was never filed. Sometime in 1983, Mr. Posner and Mr. Ferrara felt that the case stretched international law too far to have any hope of success.

They decided the material would work better as a book than a brief. The result is "Mengele: The Complete Story," to be published early next year. Mr. Posner said he will donate the proceeds of the book to the twins as a form of

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compensation.

The case took him into the world of espionage, intelligence agents, former Nazis and professional information peddlers. "Unlike most of the legal world, this is filled with disinformation and bad information," he said.

Mr. Posner persuaded the son of Dr. Mengele, Rolf Mengele, to hand over his father's letters and diaries, and in doing so, Mr. Posner says he resorted to tactics of deception foreign to his usual lawyerly ethics. "I had to be disingenuous. To this day he doesn't know that the proceeds of the book are going to the twins."

The documents Mr. Posner turned up helped forensic experts establish that Dr Mengele died in Brazil in 1979, as is now widely believed.

Despite the proof, Mr. Posner's clients do not want to accept that Dr. Mengele is really dead. "They have lived for the day in which they would confront their tormentor in a courtroom. Strangely enough, they are not interested in revenge. They want him to say on the witness stand that they gassed Jews at Auschwitz."

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IT WAS PRECISELY this desire to establish historical truth that gave rise t the suit against the Institute for Historical Review, a California-based organization dedicated to proving that the Holocaust never happened.

The institute offered a $50,000 reward "for proof that even a single Jew was gassed in a Nazi gas chamber" and then sent a personal letter to Melvin Mermelstein, head of a Los Angeles Holocaust study foundation, daring him to take up the challenge.

Mr. Mermelstein, who says he watched his mother and two sisters led away to the gas chambers at Auschwitz in 1944, accepted, filling out the institute's claim form and providing affidavits to support it.

When the institute would not honor the claim, Mr. Mermelstein sued on ground of breach of contract and emotional distress.

In the end, last July, the Institute for Historical Review agreed to pay an award of $90,000 and signed a letter of apology to Mr. Mermelstein and "all other survivors of Auschwitz for the pain, anguish and suffering" they experienced.

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